

firms that had revenues of no more than \$15 million in each of the three previous calendar years.³⁴ The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.³⁵ The SBA has approved these small business size standards for the 900 MHz Service.³⁶ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.³⁷ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.³⁸

13. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

14. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

15. Advanced Wireless Services. In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.³⁹ The *AWS-1 Report and Order* defines a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

³⁴ 47 C.F.R. § 90.814(b)(1).

³⁵ *Id.*

³⁶ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

³⁷ See "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

³⁸ See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

³⁹ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

16. Rural Radiotelephone Service. The Commission uses the SBA small business size standard applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁰ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

17. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.⁴¹ The SBA has approved these definitions.⁴² The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

18. 220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁴³ For the census category of "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁴⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁵ Thus, under this category and size standard, the majority of firms can be considered small.

19. 220 MHz Radio Service – Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴⁶ This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517212.

⁴¹ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

⁴² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

⁴³ 13 C.F.R. § 121.201, NAICS code 517212.

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

⁴⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁴⁶ Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

\$15 million for the preceding three years.⁴⁷ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.⁴⁸ The SBA has approved these small size standards.⁴⁹ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁵⁰ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁵¹ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁵² A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.⁵³

20. 700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁴ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁵⁵ Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁵⁶ SBA approval of these definitions is not required.⁵⁷ An auction of 52 Major Economic Area (MEA) licenses commenced on

⁴⁷ *Id.* at 11068 ¶ 291.

⁴⁸ *Id.*

⁴⁹ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

⁵⁰ See generally “220 MHz Service Auction Closes,” *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

⁵¹ See “FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,” *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

⁵² See “Phase II 220 MHz Service Spectrum Auction Closes,” *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

⁵³ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

⁵⁴ Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

⁵⁵ *Id.* at 5343 ¶ 108.

⁵⁶ *Id.*

⁵⁷ *Id.* At 5343 ¶ 108 n.246 (for the 746-764 MHz and 776-704 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

September 6, 2000, and closed on September 21, 2000.⁵⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁵⁹

21. Upper 700 MHz Band Licenses. The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.⁶⁰ An auction for these licenses, previously scheduled for January 13, 2003, was postponed.⁶¹

22. Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁶² The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁶³ A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁶⁴ Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁶⁵ The SBA has approved these small size standards.⁶⁶ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on

⁵⁸ See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

⁵⁹ See "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

⁶⁰ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001). Service rules were amended in 2007, but no changes were made to small business size categories. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

⁶¹ See "Auction of Licenses for 747-762 and 777-792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

⁶² See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002).

⁶³ *Id.* at 1087-88 ¶ 172.

⁶⁴ *Id.*

⁶⁵ *Id.* at 1088 ¶ 173.

⁶⁶ See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.⁶⁷ A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.⁶⁸ Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁶⁹

23. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category of "Paging."⁷⁰ Under this category, the SBA deems a business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁷¹ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁷² Thus, under this category, the majority of firms can be considered small. In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷³ A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁷⁴ The SBA has approved these small business size standards.⁷⁵ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁷⁶ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services.⁷⁷ Of those, we estimate that 360 are small, under the SBA-approved small business size standard.⁷⁸

⁶⁷ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

⁶⁸ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

⁶⁹ *Id.*

⁷⁰ 13 C.F.R. § 121.201, NAICS code 517211.

⁷¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

⁷² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁷³ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295, 62 FR 16004 (Apr. 3, 1997).

⁷⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

⁷⁵ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

⁷⁶ *Id.* at 10085, para. 98.

⁷⁷ FCC Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3., page 5-5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

⁷⁸ *Id.*

24. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction.⁷⁹ A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.⁸⁰ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

25. Wireless Telephony. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.⁸¹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁸² According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.⁸³ We have estimated that 221 of these are small under the SBA small business size standard.

26. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.⁸⁴ We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.⁸⁵ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

27. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.⁸⁶ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together

⁷⁹ Public Notice, “Auction of Wireless Communications Services, Auction Notes and Filing Requirements for 128 WCS Licenses Scheduled for April 15, 1997,” DA 97-386, Feb. 21, 1997.

⁸⁰ SBA Dec. 2, 1998 Letter.

⁸¹ 13 C.F.R. § 121.201, NAICS code 517212.

⁸² *Id.*

⁸³ FCC Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5-5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

⁸⁴ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

⁸⁵ 13 C.F.R. § 121.201, NAICS codes 517212.

⁸⁶ 13 C.F.R. § 121.201, NAICS code 517212.

with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.⁸⁷ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

28. Fixed Microwave Services. Fixed microwave services include common carrier,⁸⁸ private operational-fixed,⁸⁹ and broadcast auxiliary radio services.⁹⁰ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.⁹¹ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

29. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.⁹² There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.⁹³ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁹⁴

30. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous

⁸⁷ *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

⁸⁸ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

⁸⁹ Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called *operational-fixed* to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁹⁰ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

⁹¹ 13 C.F.R. § 121.201, NAICS code 517212.

⁹² This service is governed by Subpart I of Part 22 of the Commission's rules. See 47 C.F.R. §§ 22.1001-22.1037.

⁹³ 13 C.F.R. § 121.201, NAICS code 517212.

⁹⁴ *Id.*

calendar years.⁹⁵ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁹⁶ The SBA has approved these small business size standards.⁹⁷ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

31. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service comprises Multichannel Multipoint Distribution Service (MMDS) systems and Multipoint Distribution Service (MDS).⁹⁸ MMDS systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of MDS and Educational Broadband Service (formerly known as Instructional Television Fixed Service).⁹⁹ Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),¹⁰⁰ and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),¹⁰¹ to transmit video programming and provide broadband services to residential subscribers.¹⁰² These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.¹⁰³ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁰⁴ As described below, the SBA small

⁹⁵ See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order, 63 Fed. Reg. 6079 (Feb. 6, 1998).

⁹⁶ *Id.*

⁹⁷ See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

⁹⁸ *Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, RM-10586, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004).

⁹⁹ See *id.*

¹⁰⁰ MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission's rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) (“*MDS/ITFS Order*”).

¹⁰¹ ITFS systems are regulated by Part 74 of the Commission's rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

¹⁰² See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) (“*2006 Cable Competition Report*”).

¹⁰³ *Id.*

¹⁰⁴ See *Local Multipoint Distribution Service*, 12 FCC Rcd 12545 (1997).

business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.¹⁰⁵ Other standards also apply, as described.

32. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,¹⁰⁶ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.¹⁰⁷ This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹⁰⁸ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.¹⁰⁹ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

33. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).¹¹⁰ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

34. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹¹¹ The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹¹² An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹¹³ The SBA has approved these small business

¹⁰⁵ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁰⁶ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

¹⁰⁷ 47 C.F.R. § 21.961(b)(1).

¹⁰⁸ See *ITFS Order*, 10 FCC Rcd at 9589.

¹⁰⁹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

¹¹⁰ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

¹¹¹ See *Local Multipoint Distribution Service*, Second Report and Order, 12 FCC Rcd 12545 (1997).

¹¹² *Id.*

¹¹³ See *id.*

size standards in the context of LMDS auctions.¹¹⁴ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders.

35. 218-219 MHz Service. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹¹⁵ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹¹⁶ A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹¹⁷ Currently, no second auction is scheduled.

36. 24 GHz – Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.¹¹⁸ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹¹⁹ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

37. 24 GHz – Future Licensees. With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹²⁰ "Very small business" in the 24 GHz band is an entity that, together with controlling interests and

¹¹⁴ See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

¹¹⁵ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 Fed. Reg. 24947 (May 13, 1994).

¹¹⁶ *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 Fed. Reg. 59656 (Nov. 3, 1999).

¹¹⁷ *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 Fed. Reg. 59656 (Nov. 3, 1999).

¹¹⁸ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

¹¹⁹ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹²⁰ *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967 (2000); see also 47 C.F.R. § 101.538(a)(2).

affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹²¹ The SBA has approved these small business size standards.¹²² These size standards will apply to the future auction, if held.

38. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity."¹²³ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹²⁴ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹²⁵ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

39. *Part 15 Device Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."¹²⁶ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹²⁷ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.¹²⁸ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.¹²⁹ Thus, under this size standard, the majority of firms can be considered

¹²¹ *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967 (2000); see also 47 C.F.R. § 101.538(a)(1).

¹²² See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

¹²³ U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers"; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹²⁴ 13 C.F.R. § 121.201, NAICS code 518111.

¹²⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

¹²⁶ U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹²⁷ 13 C.F.R. § 121.201, NAICS code 334220.

¹²⁸ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

¹²⁹ *Id.* An additional 18 establishments had employment of 1,000 or more.

small.

40. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."¹³⁰ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.¹³¹ According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.¹³² Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499.¹³³ Thus, under this size standard, the majority of firms can be considered small.

41. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."¹³⁴ The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹³⁵ According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.¹³⁶ Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.¹³⁷ Thus, under this size standard, the majority of firms can be considered small.

¹³⁰ U.S. Census Bureau, 2002 NAICS Definitions, "334210 Telephone Apparatus Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹³¹ 13 C.F.R. § 121.201, NAICS code 334210.

¹³² U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

¹³³ *Id.* An additional 4 establishments had employment of 2,500 or more.

¹³⁴ U.S. Census Bureau, 2002 NAICS Definitions, "334290 Other Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹³⁵ 13 C.F.R. § 121.201, NAICS code 334290.

¹³⁶ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

¹³⁷ *Id.* An additional 3 establishments had employment of 1,000 or more.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. Should the Commission decide to extend the automatic roaming requirement to non-interconnected services or features, including services that have been classified as information services, such as broadband Internet access service, or other non-CMRS services, the only reporting or recordkeeping costs incurred will be administrative costs to ensure that an entity's practices are in compliance with the automatic rule. The compliance requirement is that carriers must provide automatic roaming to any requesting technologically compatible carrier outside of the requesting carrier's home market on reasonable and non-discriminatory terms and conditions.¹³⁸ We seek comment on the possible burden such requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burden on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any compliance requirement that may result from this proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³⁹

44. The Commission's primary objective in this proceeding is to facilitate seamless wireless communications for consumers, even when they are outside of the coverage area of their own service providers. The *Further Notice* seeks to build on the decisions made in the *Report and Order*. In the *Report and Order*, the Commission clarifies that the automatic roaming is a common carrier obligation and adopts an automatic roaming rule that is applicable to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging service.¹⁴⁰ Recognizing wireless subscribers' increasing reliance on mobile telephony services, especially the growing demand of data services by consumers, the *Further Notice* seeks comment on whether the Commission should extend the applicability of the automatic roaming requirements to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services.

45. To the extent that addressing the issue raised in the *Further Notice* requires modifying the applicability of the automatic roaming rules, we seek comment on the effect that such rule changes will have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. We invite comment on ways in which the Commission can achieve its goals while at the same time impose minimal burdens on small wireless service providers. Below, we summarize the issues raised in the *Further Notice*.

46. *Mobile Data Service Roaming.* The item seeks comment on whether the Commission

¹³⁸ See *Further Notice of Proposed Rulemaking*, § 78.

¹³⁹ See 5 U.S.C. § 603(c).

¹⁴⁰ See *supra* ¶¶ 2, 65-67.

should extend whether we should extend automatic roaming obligations to non-interconnected services and features, including information services. To the extent that a covered carrier might be a small entity, we believe that extending the scope of automatic roaming obligation would be a benefit rather than a burden.

47. *Technical Issues.* The item also seeks comment on whether there are any special technical issues (or otherwise) associated with roaming among data networks that may not exist when roaming among CMRS carriers' interconnected voice networks. In the *Further Notice*, the Commission noted that it would be concerned if requiring a carrier to offer roaming service on its data network to the customers of other carriers resulted in the carrier facing capacity constraints that adversely affect its own customers. The *Further Notice*, therefore, asks whether a carrier should have the right to limit access to its network by roamers, and what parameters should be considered as justification for such limits.

48. *Jurisdiction over Information Service.* In the *Wireless Broadband Classification Order*,¹⁴¹ the Commission determined that mobile wireless broadband Internet access service is an information service, and that it is not CMRS. If the Commission were to impose an automatic roaming on mobile wireless broadband Internet access service as proposed in the *Further Notice*, the jurisdictional issue should be considered regarding how could we treat the information service for roaming purpose. For example, could the Commission base the requirement on Title I ancillary jurisdiction, or on the Title III regulation of radio services? Alternatively, the *Further Notice* seeks comment on whether the Commission should restrict the automatic roaming mandate only to non-interconnected data services that are not classified as information services.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

49. None.

¹⁴¹ See generally, *Wireless Broadband Internet Access Declaratory Ruling*, 22 FCC Rcd 5901.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT
Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143*

Consumers increasingly expect that their mobile phones will function where they work, where they play, and where they travel. Automatic roaming fulfills these expectations in a manner that is seamless and transparent to the consumer. Today's Report and Order will help ensure that all consumers including those living in rural areas receive this benefit.

The order adopted today, however, also recognizes that a reasonable roaming request does not include a request for roaming in areas where a provider already has access to spectrum. In this respect the Report and Order continues to support the overarching goal of encouraging facilities-based competition in the wireless market. It also does not impose a price cap or any other form of rate regulation.

While the Report and Order adopted today does not impose automatic roaming obligations on carriers' broadband data services, the Further Notice adopted today seeks additional comment on automatic roaming for broadband data. I am sympathetic to some of the concerns raised regarding access to data roaming. Some companies, however, have also suggested that part of their business model for the 700 MHz band includes wholesaling capacity to provide broadband roaming to other carriers as a kind of anchor service. I am concerned that extending the roaming obligation to broadband data services at this time could undermine the wholesale model that some have advocated.

I look forward to the further development of the record on these issues, and to working with my colleagues to address the questions raised.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143

Today's item is good news for consumers who want to be able to use their mobile phones as they travel across the United States. On three occasions over the past three decades, the FCC has declined to create an automatic roaming rule. The upshot is that—until today—small, rural wireless carriers have not enjoyed the common carrier protections of Title II when negotiating roaming agreements with other carriers, including large national ones. This is an important dollars and cents issue for consumers. After all, it is consumers who pay the price at the end of the day when their carriers accept inflated roaming rates or cannot reach a roaming agreement at all.

Today's decision affirms for the first time that carriers must deal with each other in good faith and without discrimination when it comes to negotiating roaming for voice service. We also include push-to-talk and text messaging, as well as data services that interconnect with the PSTN. This means Americans will be able to travel with greater confidence that they can place and receive calls while on the road. I appreciate the Chairman's leadership in bringing this pro-consumer item to us.

I concur in part, however, because I believe we should have taken another step forward today. Consumers rely upon their mobile handsets these days for a dizzying array of data services, going well beyond those we cover in today's item. Because the Commission chose—unwisely, in my view—to reclassify data services under Title I rather than Title II of the Communications Act, these services are for the most part *not* included in the protections created by today's Order.

Consider some of the immediate effects of our decision today:

- Roaming consumers will be able to send text messages to their friends' mobile phones—because we conclude today that text messaging is “typically offered” in conjunction with voice service. But these very same consumers have no guarantee that they can send emails to their friends—even though many consumers (including virtually all of us in this room) routinely use mobile devices to send and receive email.
- Roaming consumers will be able to make voice calls to PSTN numbers in the ordinary fashion. But it is not clear that they can rely on a VoIP application they may have downloaded to call PSTN numbers; and they have no guarantee whatsoever of being able to use a peer-to-peer VoIP product that dials IP addresses rather than PSTN numbers.
- Consumers who access the Internet by using their mobile device as a dial-up modem will be able to do so while roaming.¹⁴² But consumers have no guarantee of being able to access the faster speeds offered by *non*-dial-up forms of wireless Internet access. And they have no guarantee of being able to use the many applications on their devices that rely on Internet access, such as browsers, mapping programs, interactive games, and so forth.

¹⁴² See, e.g., J.D. Biersdorfer, “Dial Up the Web with a Cellphone,” *New York Times* (July 12, 2007).

These are precisely the type of confusing, consumer-unfriendly results that led me to object to the Commission's reclassification of data services under Title I in the first place. Remember when we used to treat telephones as telephones and the telecommunications that enabled them as telecommunications services? That made for a lot less consumer confusion. Consumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when they travel. They should be able to assume that their phones will work to the fullest extent that technology permits, wherever they happen to be. And carriers should have the right to negotiate roaming agreements that secure just and reasonable prices for their own consumers.

I do appreciate my colleagues' willingness to address the issue of data roaming in a Further Notice of Proposed Rulemaking. I happen to think that the record we have before us right now is more than sufficient to support imposing an automatic data roaming rule today. Doing that would have provided some much-needed certainty to consumers and businesses alike, channeling technology development in a consumer-friendly way. But I do look forward to considering this issue in the weeks and months ahead, and I hope that we can reach a consensus that consumers should have the same roaming expectations in the future when it comes to data services that they have for voice services starting today.

Finally, my thanks to the Bureau which I know put a lot of hard work into this proceeding.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, CONCURRING IN PART**

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT
Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143*

I am thrilled that we are at last tackling the long-simmering issue of roaming. While we do not resolve all of the key issues here today, particularly broadband roaming, this is a major step forward on an issue I have long believed deserves our attention. I have spoken often about my concern with the competitiveness of the commercial mobile radio service (CMRS) wholesale market and the Commission's need to reexamine our roaming obligations. So I am particularly pleased that after many fits and starts over the past several years, we finally are putting in place specific automatic roaming obligations on CMRS providers.

While some will say that this was a dispute between large and small carriers, I see this simply as a win for consumers. Our automatic roaming obligation will help all consumers have access to better coverage and service availability no matter where they live and where they travel. No customer should have to see the words "No Service" on their wireless device when there is a compatible network available.

Many argue that given the competitiveness of the CMRS retail marketplace, there is no need for Commission intervention. There are two flaws in that reasoning.

First, especially in light of the continuing consolidation in the market, just because a market is competitive doesn't mean we shouldn't take steps to ensure it remains that way. Nothing is more fundamental than interconnection to our mission, and roaming is in many ways how the wireless world interconnects.

Second, I have been increasingly concerned about the competitiveness of the CMRS wholesale market as compared to five years ago. Concerns about roaming have become more widespread and more vocal over the past several years. Whether in the context of recent mergers or other rulemakings, the Commission is hearing regularly from small and mid-size carriers who are becoming increasingly frustrated with their ability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. Not surprisingly, consolidation in the wireless industry over the past few years has only served to amplify existing concerns about the current state of roaming practices.

A critical distinction between the wholesale and retail market is that the network technology of a carrier interested in roaming even further limits the choice of potential roaming partners in a given market. For example, it is difficult for a carrier who employs GSM technology to roam on a CDMA network. It is like a vegetarian dining at a restaurant with four options on the menu, but only having the choice of the one that does not have meat. Just because there are four or five wireless options for consumers doesn't mean that carriers have that many choices about with whom they can choose to roam.

But while we place an important piece in clarifying that automatic roaming is subject to the common carrier provisions of Title II of the Act, including Sections 201 and 202, I remain concerned that we have not finished the puzzle by extending our automatic roaming requirement to all data services. Unfortunately, our rushed effort to reclassify broadband services as Title I services has taken the Commission outside the ambit of the core legal protections and grounding afforded by Congress in Title

II. While our proceeding should be an "automatic" opportunity to include broadband services under our roaming approach, we are now presented with some unnecessarily challenging questions to our new and unsettled legal and policy framework for broadband services.

As I warned earlier this year in our wireless broadband reclassification item, we must be careful in drawing an unnecessarily bright line between wireless broadband services and commercial mobile services and the regulatory protections that come with CMRS status. Indeed, our own item goes to great length to limit automatic roaming to services that are interconnected to the public-switched telephone network, but then turns around and (rightly) includes non-interconnected text messaging and push-to-talk services in the automatic roaming services.

Rather than look for ways to narrow the automatic roaming obligation, the public interest would be much better served if we were to consider how best to frame the roaming requirement to include broadband. With the stroke of a pen, the Commission could have taken the specific step of enhancing the experience of consumers who are interested in having access to high-speed wireless services wherever they travel. As we become an increasingly mobile and broadband society, we are missing a real opportunity to improve broadband availability for American consumers through an automatic data roaming obligation.

I am very pleased, however, of the willingness of Chairman Martin and my colleagues to include a Further Notice of Proposed Rulemaking on the issue of extending this roaming obligation to other non-interconnected services or features, including information services. It is critical that we address this issue in the near term. Consumers place great value on their ability to seamlessly access their wireless broadband services and it is our job here at the Commission to step in and ensure that consumers have access to both voice and data when they leave their home service area.

For all of these reasons, while I strongly support our decision to adopt a specific rule to ensure the continued development of automatic roaming services, I approve in part and concur in part to this Report and Order.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT
Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143*

As a state commissioner, I often heard from small and rural providers about the problems they faced regarding roaming. I believe it is important for subscribers across the country, including those who live in rural areas, to have access to a robust communications network. In roaming, as with other rules, we can and should support small and rural providers and their customers in obtaining this access via wireless services. For example, just last week, we approved new rules for the 700 MHz Band that will make more spectrum available across small license areas for small and rural providers and encourage deployment of wireless service in rural areas.

Today's order recognizes that small and rural providers nonetheless find it hard to do business if their subscribers cannot be connected to larger, even nationwide, networks. The customers of these providers understandably want service when they travel outside of their provider's home network for school, work, or to access healthcare. There also may be benefits to public safety, or even homeland security, in having mobile subscribers connected at all times, even while they are outside their home networks. In addition, subscribers want roaming to work seamlessly, with what is called "automatic" roaming.

It is also worth noting that roaming is an important issue for carriers of all sizes and consumers in all places. For example, some providers have invested to build networks over large geographic areas, including building nationwide services. These large carriers want to receive reasonable compensation for the use of their networks, so they may continue to invest, maintain and upgrade their facilities to serve their subscribers, as well as other carriers' subscribers.

Today's item tries to strike a balance by clarifying that automatic roaming is a common carrier service and thus subject to protections outlined in Sections 201 and 202 of the Communications Act. I am reluctant to interfere with competitive market forces, and I am pleased that we decline to impose rate regulation on roaming fees. Small and rural carriers can be assured that, upon a reasonable request, other CMRS carriers will be required to provide them with automatic roaming services on a "just, reasonable, and non-discriminatory basis." Carriers that are likely to provide automatic roaming can be assured that the Commission will not be parsing the details of every roaming agreement.

Our rules also should encourage efficiency. Where providers have spectrum or access to it, they should build out their networks. Where they do not, we want to ensure that customers of these providers can roam on other networks. Today's item strikes the right balance by not establishing roaming as an obligation of a would-be provider for any market in which the requesting carrier already owns or leases spectrum usage rights.

Today's item also issues a Further Notice seeking comment on whether we should extend the automatic roaming obligation that we adopt today to non-interconnected services or features, including services such as wireless broadband Internet access. I hope that, in taking this step, we are not revisiting the issues we addressed only 138 days ago in the *Wireless Broadband Classification Order*, which found that wireless broadband Internet access is an information service.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT
Docket No. 05-26, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143*

I support today's narrowly-tailored action to codify wireless carrier obligations regarding automatic roaming. Today we are acting consistently with the Commission's general policy to allow competitive market forces, rather than regulations, to foster the development of wireless services, subject to the protections of Sections 201 and 202 of the Communications Act. For example, we are refraining from: imposing negotiation mandates; setting rates; creating a new class of wireless carriers; and initiating an investigation of roaming practices. Our light regulatory approach will benefit wireless consumers because we are allowing the industry to fulfill consumer expectations of anytime, anywhere communications through seamless roaming arrangements.

Given that the market for non-interconnected services provided over advanced broadband networks is still developing, it is appropriate that we are seeking additional comment on the implications of extending the automatic roaming requirement to these services. Although it is possible that unrestricted data roaming obligations may benefit consumers by providing a wider availability for the data features they increasingly rely upon, it is equally important that the Commission not inhibit innovation and investment by distorting incentives to differentiate products. I recognize and appreciate the complicated legal and economic factors involved, and I look forward to hearing from interested stakeholders on this aspect of the market. In the meantime, I strongly urge the private sector to work together to forge solutions for the benefit of all wireless consumers.

Thank you to the staff of the Wireless Bureau, my colleagues, and especially Chairman Martin.